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October 1, 2009

VIA FEDERAL EXPRESS OVERNIGHT  
 AND EMAIL TO [LISA.A.BARON@USACE.ARMY.MIL](mailto:LISA.A.BARON@USACE.ARMY.MIL)

Lisa A. Baron  
 Project Manager, Harbor Programs Branch  
 U.S. Army Corps of Engineers  
 Programs & Project Management Division  
 26 Federal Plaza - Room 2119  
 New York, NY 10278-0090

Re: Lower Passaic River Navigation User Information

Dear Ms. Baron:

This firm represents George Harms Construction Company, Inc. ("GHCC"), which operates property at 192 Doremus Avenue, River Mile 1.4 along the Lower Passaic River ("Property").<sup>1</sup> The Property was formerly known as Blue Circle Cement and is referenced in Corps of Engineers and USEPA documents as such. The property was acquired by the current owner after the "Lower Commercial Navigation Analysis," by the Corps of Engineers, revised December 29, 2008.

<sup>1</sup> The Property was acquired in February 2009 by a single purpose entity subsidiary of GHCC known as 192 Doremus LLC.

Via correspondence dated September 24, 2009 from Robert Harms, GHCCI provided you with responses to specific questions, which you posed during the August 27, 2009 meeting and in subsequent e-mails. Mr. Harms' response also provided technical details of some of the vessels which are currently used by GHCCI in the course of its operations including vessels with drafts up to 18 feet. These vessels require channel depths of up to 25 feet at low tide. As explained in Mr. Harms' September 24, 2009 letter and herein, GHCCI has already taken steps to develop the Property for use as its base of operations for northern New Jersey and New York, which use will involve larger vessels. GHCCI is in the process of specifying and identifying the larger vessels which its operations will require and believes that such vessels will be limited or even prohibited from accessing the Property by any channel depth less than 30 feet along the Property.

### Background of GHCCI

By way of background, GHCCI is a large, New Jersey-based infrastructure contractor with a large portfolio of work in the New York Harbor region. GHCCI is one of the largest construction companies in New Jersey, employing a significant number of union and non-union members of all the construction trades. GHCCI's projects are regional transportation projects, including heavy civil construction projects such as road and bridge construction, reclamation center & landfill construction, railroad construction, airport runway construction and pipeline construction. Future projects may include ocean-based wind farms as they are approved and funded. GHCCI was recently awarded, and is performing, the largest NJDOT construction project in the State, the Tonnelle Circle Project in Jersey City. A list of GHCCI projects can be found at [www.ghcci.com/projects.php](http://www.ghcci.com/projects.php).

### The Property

GHCCI will use the Property to support its projects throughout northern New Jersey and in New York and will rely heavily on the Property's access to the Lower Passaic River. Heavy machinery and materials (such as concrete aggregate), typical for large infrastructure projects, will be transported to and from the Property via the Harbor's waterways in support of these projects. The Property will be GHCCI's northern base of operations and will minimize dependence on lengthy trucking routes (>100 miles per round trip). Development of the Property will diminish loading of New Jersey's already crowded roadways through decreasing travel distances and utilization of marine transportation.

Towards these ends, GHCCI has already expended considerable resources to develop the Property including demolition of existing buildings and grading of upland areas of the Property. GHCCI has submitted a Waterfront Development Application to NJDEP and a Section 10 Application to the Corps of Engineers for construction of a 17,629 square foot concrete pier along the entire waterfront of the Property. The structure will be supported by piles and will be used for loading and offloading of heavy machinery and bulk construction equipment and materials. A steel sheet retaining wall capable of resisting heavy machinery loads will be constructed immediately landward of the existing rock revetment.

Development and use of the Property as described herein has regional benefits and is consistent with New Jersey policies. Movement of construction materials and equipment to and

from the Property via waterways will allow GHCCI to take heavy trucks off the severely congested roads of the New York Harbor region and will also reduce roadway wear and tear. These benefits are consistent with the purpose of the State of New Jersey's State Plan and specifically the Port Authority of New York and New Jersey and the New Jersey Economic Development Authority's Portfields Initiative and other programs designed to develop industrial capability within the Port District's 25 mile radius of the Port. Through the encouragement of waterfront development and marine transport utilization, the Portfields Initiative and other programs intend to lighten the burden currently imposed on area roadways by the bustling industry of northern New Jersey and New York.

### Remedy Selection

As stated in Mr. Harms' September 24, 2009 letter, we were surprised by the possibility that the Corps may not maintain the authorized depths of the Lower Passaic River. Remedy selection based solely on existing, and not future, uses would be inappropriate. This is partly because the environmental impacts, which are sought to be addressed, have impacted use of the Lower Passaic. The Corps last maintained the authorized depth in 1983,<sup>2</sup> and it is clear that the channel has not been maintained due to channel's environmental conditions. In fact, during the August 27 meeting, representatives of the Corps indicated that it is very likely that the Corps would not maintain the Lower Passaic channel in the presence of existing contaminants and would likely maintain it if the contaminants were not present. Remedy selection using an as-contaminated, not as-clean, baseline of uses is inconsistent with remedy selection decision-making criteria set forth in the National Contingency Plan, 40 C.F.R. §300 et seq., interpretive decisions and past practice. And such a remedy would certainly not be a basis to decrease the authorized depths for operation and maintenance of a federal navigation channel.

Slides presented during the August 27, 2009 meeting presented the "Capping with Dredging for Flooding and Navigation" alternative as providing for maintenance of the channel's 30 ft authorized depth from RM 0-1.2, and then only 16 ft from RM 1.2-1.9. We would suggest an option allowing for maintenance of the 30 ft authorized depth to at least RM 1.6 or further. This would allow at least an additional four facilities, as listed on the Corps map handed out at the August 27 meeting, to have the benefit of the channel's authorized 30 ft depth, including GHCCI.<sup>3</sup> The additional costs of maintaining an additional at least 0.4 miles of the channel to the authorized depth of 30 ft is not prohibitive and is outweighed by the benefits of the additional uses it would provide.

### Conclusions

GHCCI reasonably relied on the existing authorized depths in the Lower Passaic River and the Corps maintenance of those depths in purchasing and developing the Property. GHCCI's current and planned uses of the Property are consistent with planning and development goals of the State of New Jersey including its State Plan and Portfields Initiative. Remedy selection by USEPA

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<sup>2</sup> The Point No Point Reach (RM 1.2 -2.5) was last maintained at 30 feet (to RM 1.9) in 1983. Lower Passaic River Commercial Navigation Analysis, USACE, rev. December 29, 2008, Table 1.

<sup>3</sup> Nimco Shredding at RM 1.2, GHCCI at RM 1.4, Amerada Hess at RM 1.5, and Getty Petroleum at RM 1.6.  
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Lisa A. Baron  
Project Manager, Harbor Programs Branch  
U.S. Army Corps of Engineers  
Programs & Project Management Division  
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Page 4

based on as-contaminated uses would be inconsistent with established remedy selection decision-making criteria and therefore an abuse of discretion. GHCCI strongly requests that USEPA and the Corps select a remedy which maintains all Lower Passaic River federal navigation channel existing authorized depths, and, at a bare minimum, a remedy which maintains the channel's authorized depth of 30 ft to at least River Mile 1.6.

Sincerely,



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Steve Barnett

JSB:jd

cc: Alice Yeh, USEPA, [yeh.alice@epa.gov](mailto:yeh.alice@epa.gov)  
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